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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

GENERAL MOTORS CORPORATION,
Petitioner

v.

LEE M. THOMAS, Acting Administrator,
United States Environmental Protection Agency,
Respondent

AMICUS CURIAE BRIEF OF AUTOMOBILE IMPORTERS OF AMERICA, INC. IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Can interpretative rules be distinguished from legislative rules by examining the agency's intent rather than the rule's impact, so that the agency can expand the interpretative rule exception to the notice and comment requirement of the Administrative Procedure Act?

(2) Does due process preclude an interpretative rule from being promulgated and reviewed under §307(b) of the Clean Air Act, which denies judicial review in subsequent enforcement proceedings?

(3) Is it proper for a court to apply a deferential standard of judicial review when reviewing an interpretative rule adopted without notice and comment?

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Pursuant to Rule 36 of the Rules of this Court,[1] Automobile Importers of America, Inc. ("AIA") respectfully submits this *amicus curiae* brief in support of the petition for a writ of *certiorari* filed by General Motors Corporation ("GM"). The writ should be granted because this case involves important questions of federal administrative law which have not been, but should be, settled by this Court, and because the decision of the D.C. Circuit conflicts with decisions of this Court and of other Courts of Appeals.

1. Written consents of counsel for both parties have been filed with the Clerk.

INTEREST OF AMICUS CURIAE AUTOMOBILE IMPORTERS OF AMERICA, INC.

AIA is a trade association organized as a non-profit District of Columbia corporation. Its Members are either manufacturer-authorized U.S. importers of motor vehicles or corporate affiliates of such importers.[2]

All motor vehicles imported into the United States must comply with emission standards established under the Clean Air Act (P.L. 88-206, 42 U.S.C. §§7401-7642, as amended). P.L. 88-206 §203(a)(1), 42 U.S.C. §7522 (a)(1). Moreover, under the Clean Air Act (hereinafter "the Act" or "CAA"), importers are considered to be manufacturers and must comply with the duties and responsibilities imposed on manufacturers by the Act. P.L. 88-206 §216(1), 42 U.S.C. §7550(1). An AIA Member must therefore recall a class of its vehicles upon an EPA determination that an emissions nonconformity exists in a substantial number of vehicles in that class. P.L. 88-206 §207(c), 42 U.S.C. §7541(c). The Act also prohibits AIA Members from refusing or failing to comply with the recall provisions of §207 (P.L. 88-206 §203(a)(4), 42 U.S.C. §7522(a)(4)), and in the event of a violation, AIA Members are subject to the Act's penalty provisions. P.L. 88-206 §205, 42 U.S.C. §7524.

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2. The Members of AIA are:

Alfa Romeo, Inc.
BMW of North America, Inc.
Fiat Auto U.S.A., Inc.
American Honda Motor Company, Inc.
American Isuzu Motors, Inc.
Jaguar Cars, Inc.
Lotus Performance Cars
Mazda Motors of America (Central) Inc.
Mitsubishi Motor Sales of America, Inc.
Nissan Motor Corporation In U.S.A.
Peugeot Motors of America, Inc.
Porsche Cars North America, Inc.
Renault USA, Inc.
Rolls-Royce Motors Inc.
Saab-Scania of America, Inc.
Subaru of America, Inc.
Toyota Motor Sales U.S.A., Inc.
Volvo North America Corporation

This litigation concerns the validity of an Environmental Protection Agency ("EPA") rule specifying a motor vehicle manufacturer's recall and repair obligations under the CAA (the "rule" or the "recall/repair rule"). AIA is interested in this action because it presents important questions regarding EPA rulemaking procedures and judicial review of EPA rules. The answers to these questions directly and significantly affect AIA Members.

The rule at issue was adopted by EPA without notice and comment as a "nationally applicable regulation" under §307(b) of the CAA (42 U.S.C. §7607(b)) ("§307(b)").[3] 40 C.F.R. §1803 app a, 45 *Fed. Reg.* 36,396 (May 30, 1980). The rule requires a manufacturer to repair a recalled vehicle free of charge even if the vehicle is beyond its statutory 5 year/50,000 mile useful life under 42 U.S.C. §7521(d)(1) at the time of repair.

The rule clearly affects AIA Members. First, it was promulgated as a "nationally applicable regulation" imposed on motor vehicle manufacturers, and AIA Members are thus required to comply with it. Second, because the rule specifies the class of vehicles which a manufacturer must repair free of charge, it defines a potentially significant economic burden imposed on AIA Members by the CAA's recall requirement.

The procedural issues in this case, however, are of particular concern to AIA. There are three questions of federal administrative law which affect AIA Members

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3. This section provides in relevant part:

(b)(1) A petition for review of . . . any . . . nationally applicable regulations promulgated . . . by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia . . . . Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise.

and give rise to the need for Supreme Court review. They are: (1) what are the limits of the "interpretative rule exception" to the notice and comment requirement of the Administrative Procedure Act ("APA"); (2) does due process preclude the EPA from promulgating an interpretative rule under §307(b) of the CAA, because that section forecloses judicial review in subsequent enforcement proceedings;[4] and (3) what is the proper standard of review to be exercised by a court reviewing an interpretative rule adopted without notice and comment?

Because AIA Members are subject to EPA rules regulating the motor vehicle industry, they are directly affected by the rulemaking procedures used by that agency and are interested in protecting their right to participate in EPA proceedings through the notice and comment process. Because the rule at issue was labeled an "interpretative rule," it was promulgated without either the publication of a notice in the *Federal Register* or an opportunity for the public to comment. The agency's failure to provide notice and comment is particularly disturbing in this case because the recall/repair rule creates an obligation which is not set forth in the Act and which directly affects the costs of doing business of AIA Members (since it dictates the number of cars which a manufacturer must fix free of charge).

AIA Members also have a great interest both in preserving their right to judicial review of EPA rules (especially in enforcement proceedings) and in assuring that the courts apply the proper standard of review. This is especially true when, as here, the agency adopts a rule without notice and comment, thereby precluding comment by AIA Members at the administrative level.

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4. Section 307(b)(2) provides:

> (b)(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

By accepting EPA's contention that the rule was a "nationally applicable regulation" reviewable only under §307(b)(1) of the CAA, the D.C. Circuit's decision creates a rule of law in violation of AIA Members' due process rights. Because §307(b)(2) denies judicial review in enforcement proceedings, the court's opinion creates an unconscionable situation: AIA Members can be denied notice and comment during rulemaking and then can be precluded from challenging the validity of the rule when it is applied to them in subsequent enforcement actions.

Finally, despite the absence of notice and comment, the D.C. Circuit examined the EPA rule at issue under the very "narrow" or lenient standard of review applicable to rules adopted after notice and comment. If EPA can enjoy a deferential standard of judicial review with respect to a rule promulgated without notice or comment, AIA Members not only will be denied the right to a hearing before the agency, but also will be denied the right to meaningful judicial review. In this way, AIA Members will be denied not one, but two procedural safeguards which are the cornerstones of our system of administrative law.

SUMMARY OF ARGUMENT

In this case, the Court of Appeals for the District of Columbia Circuit decided three important questions of federal administrative law which have not been, but should be, decided by this Court. Moreover, this Court's decisions suggest that the D.C. Circuit decided these issues incorrectly.

Specifically, the D.C. Circuit began by approving the promulgation of a far-reaching administrative rule without the APA's normal notice and comment procedures. According to the Court of Appeals, the rule, although certainly an important expansion of the EPA's governing statute, was not legislative, but merely interpretative.

Having permitted EPA to avoid notice and comment, the D.C. Circuit also drastically limited the opportunity of the affected public to challenge the rule. The court upheld the rule as a nationally applicable regulation which could only be overturned by a challenge within sixty days of promulgation and could not be attacked in a subsequent enforcement proceeding.

Finally, despite the denial of both the opportunity to comment and the right to challenge the rule in later enforcement proceedings, the D.C. Circuit held that the proper standard of review in this case — the only challenge the rule would ever face — was the deferential standard developed by this Court in *Chevron USA v. NRDC*, ____U.S. ____, 104 S.Ct. 2778 (1984) (a case involving legislative regulations adopted after notice and comment). Each and all of these actions by the D.C. Circuit cry out for this Court's review.

Furthermore, the Court of Appeals decision conflicts with the opinions of other circuits on two important issues — the proper scope of the "interpretative rule exception" to the APA's notice and comment requirement and whether the *Chevron* standard should be applied by a court reviewing an interpretative rule. It is important for this Court to grant the requested writ of certiorari in order to settle these conflicts among the circuits.

REASONS WHY THE WRIT SHOULD BE GRANTED

THE COURT OF APPEALS' DECISION CONFLICTS WITH DECISIONS OF OTHER CIRCUITS AND PRESENTS IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

A. What Are the Limits of the "Interpretative Rule" Exception to the APA's Notice and Comment Requirement?

The first question which should be decided by this Court concerns the scope of the "interpretative rule exception" to the notice and comment requirement of 5 U.S.C. §553. Under this section, an agency wishing to adopt a "legislative rule" must publish its proposal in the *Federal Register* and must provide the public with an opportunity to comment. Notice and comment need not be provided, however, if the rulemaking involves merely an "interpretative rule." Yet the APA fails to define the terms "interpretative rule" and "legislative rule." Over the years, the distinction between these two types of rules has been the subject of numerous, and at times conflicting, Court of Appeals decisions, as agencies have sought to avoid notice and comment. Only this Court can clarify which kinds of rules are legislative (and can be promulgated only after notice and comment) and which kinds are interpretative (and thus can be adopted in the absence of such procedures).

1. The Importance of the Question

In this case, EPA adopted, without notice and comment, a rule specifying motor vehicle recall and repair obligations that are not apparent on the face of the CAA. Moreover, even though the agency adopted the rule in response to a particular factual situation (a GM recall of 1975 Cadillacs), it made the rule applicable to all manufacturers in all cases, regardless of the facts involved. Nevertheless, the D.C. Circuit held that the rule was interpretative. If this is correct, notice and comment were indeed unnecessary. If EPA and the Court of Appeals were incorrect, the affected public was wrongfully deprived of its right to be heard.

The scope of the interpretative rule exception, however, is important for reasons beyond this case and even beyond EPA's regulation of the motor vehicle industry. To a large extent, the exception defines federal administrative procedure. Under the APA, legislative rulemak-

ing is the norm; interpretative rules are the exception. If courts are not mindful of decisions which expand the exception, at some point the exception — the absence of notice and comment — will become the norm. This not only would frustrate the intent of Congress in enacting the APA's notice and comment requirement, it also would infringe upon the affected public's constitutional right to be heard. *See Forrester v. CPSC*, 559 F.2d 774, 787 (D.C. Cir. 1977); *Sierra Club v. Costle*, 657 F.2d 298, 392 n.462 (D.C. Cir. 1981) (regarding a Fifth Amendment right to notice and comment). The *en banc* D.C. Circuit in this case recognized the need for guidance in this area when it stated that the standards for distinguishing between interpretative and legislative rules are "enshrouded in considerable smog." *General Motors Corp. v. Ruckelshaus* 742 F.2d at 1561, 1565 (1984). It is thus important for this Court to define the limits of the "interpretative rule exception" to the APA's notice and comment requirements.

2. The Conflict among the Circuits

Guidance from this Court is also needed in order to resolve a split among the circuits created by the decision in this case. The test applied by the D.C. Circuit to determine whether a rule is interpretative or legislative conflicts with the tests that have been used by other Courts of Appeals. According to the D.C. Circuit, whether a rule is interpretative or legislative depends upon: (1) the agency's own label; and (2) whether the agency *intended* to create new law. 742 F.2d at 1565. Other Circuits have enunciated different tests, all of which seem to focus on the *actual impact* of the rule, regardless of the agency's intent:

> (i) *Eighth Circuit:* Whether a rule is legislative or interpretative depends upon the *impact* on the affected parties. *American Bancorp. v. Board of Gov-*

ernors of Federal Reserve System, 509 F.2d 29, 33 (8th Cir. 1974).

(ii) *Ninth Circuit:* Legislative rules are those which effect a change in existing law or policy, create new law, and impose general, extra-statutory obligations pursuant to authority delegated by the legislature. Interpretative rules "go more to what the administrative officer thinks the statute ... means" and "are used more for discretionary fine-tuning than for general law making." *Alcaraz v. Block*, 746 F.2d 593, 613 (9th Cir. 1984).

(iii) *Tenth Circuit:* An interpretative rule is merely a clarification or explanation of an existing statute or rule while a legislative rule effects a policy change. *First Bancorporation v. Board of Governors of Federal Reserve System*, 728 F.2d 434, 438 (10th Cir. 1984).[5]

The D.C. Circuit has expressly declined to use the substantial impact test for distinguishing between legislative and interpretative rules. *Cabais v. Egger*, 690 F.2d 234, 237 (D.C. Cir. 1982).

The court below focused on whether an agency *intends* a rule to create new rights and duties rather than on whether the rule *in fact* does so. Under this "intention test," the D.C. Circuit found the recall/repair rule to be interpretative and not legislative. 742 F.2d at 1565. The

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5. Professor Davis has discussed another test to distinguish between legislative and interpretative rules. Where the agency acts under a specific power, the rule is legislative. A rule is interpretative when there is no such delegation and the agency acts only upon its inherent power to issue rules interpreting its enabling statute. K. Davis, *Administrative Law Treatise*, §7.8 (2d ed. 1979 & Supp. 1982). Petitioner sets forth a more exhaustive discussion of the various tests the numerous Circuits have devised. *See* GM's Petition at pp. 9-15.

opposite result would attain under the "impact test," however, due to the recall/repair rule's significant effect on the duties of motor vehicle manufacturers.

This Court has never definitively explained the difference between legislative and interpretative rules. In *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979), the Court seemed to endorse the "creation of new rights" or "impact test" when it stated that an inherent characteristic of a legislative rule is that it "affect[s] individual rights and obligations." *See also Morton v. Ruiz*, 415 U.S. 199, 232 (1974). The guidance and direction of this Court is needed in order to settle the conflict among the circuits and to establish a test for distinguishing these two types of rules upon which our system of administrative law is based.

B. Does Due Process Preclude an Interpretative Rule from Being Promulgated and Reviewed under §307(b) of the Clean Air Act Because That Section Denies Judicial Review in Subsequent Enforcement Proceedings?

Under §307(b)(1) of the CAA, a petition for judicial review of any EPA rule promulgated as a "nationally applicable regulation" must be filed in the D.C. Circuit within sixty days from the date the rule is published in the *Federal Register*.[6] Section 307(b)(2) then states that an EPA action which could have been reviewed under §307(b)(1) is not subject to judicial review in civil or criminal proceedings for enforcement.

In this case, EPA maintained that the recall/repair rule was a nationally applicable regulation and was reviewable only under §307(b)(1). The agency's *Federal Register* notice stated:

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6. If such a petition is based solely on grounds occurring after such sixtieth day, however, the petition may be filed within 60 days after such grounds arise. §307(b)(1).

> NOTE: This rulemaking constitutes a "nationally applicable regulation" under Section 307(b)(1) of the Clean Air Act, as amended. 42 U.S.C. §7607(b)(1). Any judicial review of this section is, accordingly, governed by that provision.

45 *Fed. Reg.* 36,396 (May 30, 1980).

EPA's brief before the D.C. Circuit was consistent with its *Federal Register* notice. The agency argued that the recall/repair rule was an interpretative rule and that such rules can be promulgated as "nationally applicable regulations" which: (1) can be reviewed only by the D.C. Circuit; (2) can be reviewed only by a petition for review filed within 60 days of promulgation; and (3) under §307(b)(2), cannot be challenged in subsequent enforcement actions. EPA brief at pp. 42-46.

The D.C. Circuit agreed with EPA and sustained the rule. The court thus held that interpretative rules can be promulgated under §307(b)(1) and that such rules are reviewable only under that section. As a result, interpretative rules are now subject to the denial of judicial review set forth in §307(b)(2) (*i.e.*, they cannot be attacked in subsequent enforcement actions).

This situation is contrary to the "traditional notions of fair play and substantial justice" on which our legal system is based.[7] *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).[8] If a rule is promulgated without notice and comment, the Fifth Amendment should guarantee any party the right to challenge the rule in a subsequent enforcement action. Due process should therefore prohibit promulgation and review of interpre-

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7. The Court of Appeals decision also flies in the face of one of the basic tenets of administrative law — that interpretative rules have no binding effect and are not controlling upon a court (such as when a court is hearing an enforcement action). 2 K. Davis, *Administrative Law Treatise*, §§7.8-7.13 (2d ed. 1979 & Supp. 1982).

8. *See also Goss v. Lopez*, 419 U.S. 565, 574 (1975), where the Court speaks of the constitutional requirement of administrative procedures to be "fundamentally fair".

tative rules under §307(b) because of that section's preclusion of judicial review in later enforcement proceedings.[9]

The denial of judicial review set forth in §307(b)(2) raises serious constitutional questions when applied to a rule, such as the recall/repair rule, which is adopted without notice and comment. Two examples are enough to make these constitutional questions obvious:

> 1. An interpretative rule is promulgated under §307(b)(1); a party is not yet in the business affected by the rule and thus fails to challenge the rule within 60 days; EPA then takes the position that the party is barred from challenging the rule in an enforcement action years later.
>
> 2. EPA promulgates an interpretative rule under §307(b)(1); a party institutes an action for review commenced within 60 days; EPA prevails in that action and then takes the position that *another* party is precluded from attacking the rule in a subsequent enforcement action.

One Justice of this Court has expressed doubt about the constitutionality of § 307(b)'s limitation on judicial review when applied to rules adopted *with* notice and comment. Justice Powell has noted that there is a serious question as to whether a party can be precluded by §307(b) from challenging an EPA *legislative* rule, especially if the person did not realize that the rule had been promulgated because he had not read the *Federal Reg-*

9. It would thus seem that by finding the rule to be interpretative and then upholding it on the merits the D.C. Circuit erred in one of two significant ways. The Court either (1) was wrong in finding the rule to be interpretative; *or* (2) properly found the rule to be interpretative, but failed to recognize that due process prevented it from exercising jurisdiction under §307(b). In the latter case, the D.C. Circuit lacked subject matter jurisdiction to review the merits and the proper forum for GM's challenge was perhaps a United States District Court.

ister notice.[10] *See, e.g., Adamo Wrecking Co. v. United States*, 434 U.S. 275, 289 (1978) (Powell, J., concurring) ("If the constitutionality of the validity of §307(b) of the Clean Air Act had been raised. . . , I think it would have merited serious consideration."); *Harrison v. PPG Industries*, 446 U.S. 578, 594 (1980) (Powell, J., concurring) ("I continue to have reservations about the constitutionality of the notice and review preclusion provisions of §307(b).").[11] Surely this constitutional question is even more serious where, as here, *opportunity for notice and comment is not provided.*[12]

It is necessary for this Court to establish that the denial of judicial review set forth in §307(b)(2) cannot apply to interpretative rules, and thus that such rules cannot be promulgated or reviewed under §307(b)(1). Indeed, the Court should take this opportunity to strike down §307(b)(2) as unconstitutional. The Court should confirm that due process guarantees any person the right to challenge an administrative rule (and especially an interpretative rule) in judicial enforcement proceedings, irrespective of whether suit was previously brought against the rule by another party and irrespective of the outcome of any such suit.

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10. This question also arises in the situation where at the time of a rule's promulgation a person has not yet even established a business affected by the rule and thus had no reason to be interested in the *Federal Register* notice.

11. In *Harrison*, this Court discussed EPA "final actions" that are reviewable under §307(b)(1). The Court did not address, however, either the reviewability under § 307(b)(1) of an interpretative rule promulgated as a "nationally applicable regulation" or the constitutionality of § 307(b)(2).

12. The existence of this substantial constitutional question has also been recognized by the lower courts. *Chrysler Corp. v. EPA*, 600 F.2d 904, 912-13 (D.C. Cir. 1979) (acknowledging a "nagging presence of a substantial due process question" with respect to a provision of the Noise Control Act of 1972 virtually identical to §307(b) of the CAA); *NRDC v. EPA*, 673 F.2d 400, 406 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 879 (1983) (noting the same constitutional question arising under the Clean Water Act).

C. If a Rule Is Promulgated under the Interpretative Rule Exception to the APA's Notice and Comment Requirement, What Is the Proper Standard of Review To Be Exercised by a Reviewing Court?

This Court recently held that a highly deferential standard of review is appropriate when a court reviews a *legislative rule* promulgated *after notice and comment*. *Chevron USA v. NRDC*, *supra*. The case at bar presents the question of whether such deference is proper when the subject of a court's review is an interpretative rule which was promulgated without notice and comment. Although there was absolutely no suggestion in *Chevron* that deference is proper in such cases, the D.C. Circuit nonetheless held that the *Chevron* standard is indeed appropriate when reviewing interpretative rules.

1. The Importance of the Question

The D.C. Circuit's application of the *Chevron* standard of review in this case (742 F.2d at 1566-67) is in direct conflict with prior decisions of this Court regarding the proper standard to be used when reviewing interpretative rules. In *Skidmore v. Swift*, 323 U.S. 134, 140 (1944), this Court stated:

> [t]he rulings, interpretations and opinions of the Administrator . . . , while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

This Court has further stated that guidelines (*i.e.*, interpretative rules promulgated without legislative authority) should be accorded less weight by a reviewing court than regulations which Congress has declared are to have the force and effect of law (*i.e.*, legislative rules). *General Electric Co. v. Gilbert*, 429 U.S. 125, 141-42 (1976), *citing Standard Oil Co. v. Johnson*, 376 U.S. 481, 484 (1942) (interpretative rules are reviewable under the *Skidmore* standard).

If the D.C. Circuit's holding stands, a party denied notice and comment by an agency will find its right to judicial review "limited to the narrower inquiry into whether the agency's [rule] was 'sufficiently reasonable' to be accepted." 742 F.2d at 1567. This situation threatens two of the most important procedural due process safeguards that our system of administrative law has developed and that our Constitution guarantees: the right to be heard and the right to meaningful judicial review. This Court should therefore confirm that the *Chevron* standard is not applicable to judicial review of interpretative rules.

2. The Conflict among the Circuits

The standard of review used by the D.C. Circuit in this case also conflicts with the standards applied by other Circuits when reviewing other interpretative rules. First, the D.C. Circuit's decision to extend the deferential *Chevron* standard to review of interpretative rules is in direct conflict with the recent decision in *Capitano v. Secretary of Health & Human Services*, 732 F.2d 1066, 1076 (2d. Cir. 1984). The Second Circuit expressly held in that case that the *Chevron* standard is *not* applicable to interpretative rules.

Second, there is a substantial body of pre-*Chevron* case law from numerous Courts of Appeals to the effect that the standard of review for interpretative rules is more stringent than the standard for legislative rules.

There is also nothing in the *Chevron* decision which suggests that those earlier decisions are invalid.

For example, the 11th Circuit has stated that "an agency's interpretative rules are accorded less deference than its legislative rules." *Frank Diehl Farms v. Secretary of Labor*, 696 F.2d 1325, 1329 (11th Cir. 1983). The Fifth Circuit has taken the same position. *Shell Oil Co. v. FPC*, 491 F.2d 82, 88 (5th Cir. 1974). Indeed, prior to the Chevron decision, the D.C. Circuit itself recognized that interpretative rules are subject to a greater scrutiny than legislative rules. *National Distributing Co. v. United States Treasury Department*, 626 F.2d 997, 1019 (D.C. Cir. 1980).

There is thus an irreconcilable split between Circuits with respect to the applicability of the *Chevron* standard of review to interpretative rules. The D.C. Circuit opinion also conflicts with pre-*Chevron* decisions of both this Court and other Courts of Appeals. It is therefore necessary for this Court to settle the important question of whether the *Chevron* or *Skidmore* standards should be applied when a court reviews an interpretative rule.

CONCLUSION

For the foregoing reasons, General Motors' petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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